

Request for Board of Commissioners' Action

From: Larry Sanders, County Engineer Date: December 12, 2019

Subject: Contract for Engineering Services Item Number: VIII-G

Larry Sanders has submitted the attached contract for engineering services that will be done on the 2019 CDBG project, Roberts Road. Minutes reflecting adoption of the contract for services is a new requirement for CDBG projects.

Chairman will need a motion to accept the contract from Arrow Engineering Services for the 2019 CDBG Project.

Motion made by _____

Second made by _____

Any discussion: _____

Votes _____ yes _____ no

Motion carried/ failed

**ENGINEERING CONTRACT AGREEMENT FOR ROBERTS ROAD
STREET PAVING AND FLOOD AND DRAINAGE PROJECT**

(GRANT NUMBER (19p-y-037-1-6058))

THIS AGREEMENT, made and entered into this 20th day of November, 2019, by and between Cook County (Party of the First Part, hereinafter called the Owner) and Arrow Engineering and Construction Services, LLC (Party of the Second Part, hereinafter called the Engineering Firm) for the Civil Design and Construction Management for ROBERTS ROAD STREET PAVING AND FLOOD AND DRAINAGE PROJECT (hereinafter called the Project).

WITNESSETH: That the said Engineering Firm has agreed, and by these presents does agree with the said Owner, to perform all necessary Surveying Work, Civil Design Work, Permitting and Construction Management, in strict conformity with the Georgia Department of Community Affairs guidelines and requirements, and any Cook County Standard Specifications or guidelines or requirements that may be applicable to this project. The work covered by this agreement includes all Surveying, Design, Permitting, Document Preparation, Meetings and any other incidental work necessary for the successful construction completion of this project.

THE ENGINEERING FIRM shall commence the work with adequate force and equipment immediately upon Notification to Proceed from the Owner and submit design and permit documents to the Owner in no more than 180 consecutive calendar days from the Notice to Proceed.

In the event the Engineering Firm fails to complete the work within 180 consecutive calendar days after the Notice to Proceed, liquidated damages shall be paid to the Owner at the rate of \$ 50.00 per day, plus any expense incurred by the Owner, for engineering, legal, and inspection services associated with any such avoidable delays caused by the Engineering Firm until substantial completion is achieved.


THE OWNER shall pay and the Engineering Firm shall receive a total fee of 12% of the actual construction costs for the project. The estimated fee to be paid to the Engineering Firm and to be considered as full compensation for all work performed by the Engineering Firm under this contract will therefore be \$ 42,153.00 . Which sum shall be paid monthly in percentage of work completed but, before issuance of certificate of payments, if the Engineering Firm shall not have submitted evidence satisfactory to the Owner and owner's agents that all payrolls, material, bills, and other indebtedness connected with the work have been paid, the Owner may withhold in addition to a retained percentage of 10%, such amount or amounts as may be necessary to pay just claims for labor and services rendered and materials in and about the work, and such amount or amounts withheld or retained may be applied by the Owner to the payment of such claims.

IN WITNESS THEREOF, the parties hereto have executed this Agreement in quadruplicate, this _____ day of _____, 2019 .

ATTESTED:

_____ BY _____
(Owner)
County, Georgia

ATTESTED:

_____ BY  _____
(Engineering Firm)
Arrow Engineering and Construction Services, LLC

OPINION OF ATTORNEY

This is to certify that I have examined the attached Contract Documents, that after examination, I am of the opinion that such documents conform to the laws of the State of Georgia, that the execution of the Engineering Contract is in due and proper form, and that the representatives of the respective contracting parties have full power and authority to execute Contract on behalf of the respective contracting parties and that the foregoing agreements constitute valid and binding obligations on such parties.

Attorney for Cook County, Georgia

This the _____ day of _____, 2019.

Contract Clauses

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Section 3 Clause of the Urban Development Act of 1968

- 1.) The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project to be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- 2.) The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- 3.) The contractor will send to each labor organization or representative of workers with which he has a collective bargain-agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- 4.) The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the letter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- 5.) Compliance with the provisions of Section 3, the regulations set forth in the 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

Provision for Remedies Clause

1.) **Termination:** Unearned payments under this contract may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by City/County; or if the grant to the City/County under the Community Development Block Grant Program is suspended or terminated. Moreover, if through any cause, the contractor shall fail to fulfill its obligations under this contract in a timely and proper manner, or if the contractor shall violate any of the covenants, agreements, conditions or obligations of the contract documents; the City/County may terminate this contract by giving written notice to the contractor and surety of such termination and specifying the effective date of such termination. In such event, the City/County may take over the work and prosecute the same to completion, by contract or otherwise, and the contractor and his sureties shall be liable to the City/County for any additional cost incurred by the Owner in its completion of the work and they shall also be liable to the Owner for liquidated damages for any delay in the completion of the work as provided below. Furthermore, the Contractor will be paid an amount which bears the same ratio to the total compensation as the work and services actually performed bear to the total work and services required. Provided, however, that if less than sixty percent of the services required by this Contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the services required by this Contract.

2.) **Liquidated Damages for Delays.** If the work is not completed within the time stipulated, therefore, including any extensions of time for excusable delays as herein provided, the Contractor shall pay to the Owner as fixed and agreed liquidated damages (it being impossible to determine the damages occasioned by the delay) for each working day of delay, until the work is completed, the amount as set forth in (insert location of liquidated damages statement, normally found in the Contract General Conditions) and the Contractor and his sureties shall be liable to the Owner for the amount thereof.

3.) **Excusable Delays.** The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due:

(a) To any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency;

(b) To any acts of the Owner;

(c) To causes not reasonable foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in the performance of some other contract with the Owner, fires, floods, epidemics, quarantine, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, and cyclones; and

(d) To any delay of any subcontractor occasioned by any of the causes specified in subparagraphs (a) (b) and (c) or this subparagraph "d".

Provided, however, that the Contractor promptly notified the Owner within ten (10) days of the cause of the delay. Upon receipt of such notification, the Owner shall ascertain the facts and the cause and extent of delay. If upon the basis of the terms of this contract the delay is properly excusable, the Owner shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

Termination for Convenience Clause

1.) Termination for Convenience of Cook County:

The county may terminate this contract at any time for any reason by giving at least thirty (30) days notice in writing to the contractor. If the contract is terminated by the county as provided herein, the contractor will be paid a fair payment as negotiated with the county for the work completed as of the date of termination.

Equal Employment Opportunity (EEO) Clause

During the performance of this contract, the Contractor agrees as follows:

- 1.) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2.) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 3.) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4.) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- 5.) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 6.) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by the rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7.) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of (name of public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

47-4574799

Federal Work Authorization User Identification Number

07/21/2015

Date of Authorization

ROAD ENGINEERING AND CONSTRUCTION SERVICES

Name of Contractor

ROBERTS ROAD STREET PAVING AND FLOOD AND DRAINAGE PROJECT

Name of Project

COOK COUNTY BOARD OF COMMISSIONERS

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on 12, 9, 2019 in ROOSTA (city), GA (state).

[Signature]
Signature of Authorized Officer or Agent

H. CARRY SANDOZS (OWNER)
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE 19 DAY OF December, 2019.

Nicki S. Parrish
NOTARY PUBLIC

My Commission Expires:

